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Before Jitendra Chauhan, J.

BHAJAN SINGH—*Appellant*

versus

STATE OF PUNJAB—*Respondent*

CRA No. S - 24 - SB of 2012

October 03, 2013

Narcotic Drugs and Psychotropic Substances Act, 1985 - S. 15 - Appellant convicted under section 15 for possession of bag containing poppy husk - Conviction based on testimony of official witnesses - Prosecution did not examine the independent witness and seal was also not given to independent witness after use - Effect of non-joining of independent witness by the prosecution would lead to setting aside impugned judgment and setting aside conviction .

Held, that as emanates from the prosecution evidence, the seal was not entrusted to the independent witness Roop Singh. The prosecution has not assigned any reason worth the name for preferentially handing over the same to ASI Jasvir Singh, an official witness. Undeniably, there is a delay of three days in dispatch of the sample parcels to the office of Chemical Examiner. The independent witness Roop Singh, in whose presence the recovery was allegedly effected, has been given up on the pretext of his having been won over by the accused, but no reason was given by the prosecution in this regard.

(Para 12)

Further held, that in view of the infirmities catalogued hereinabove, the present appeal is accepted and the impugned judgment of conviction and order of sentence is hereby set aside and the appellant is hereby acquitted of the charged offence.

(Para 18)

AS Kalra, Advocate *for the appellant*.

Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J.

(1) The present appeal has been filed against the judgment and order dated 10th December, 2012, passed by learned Judge, Special Court, Ludhiana, whereby he convicted and sentenced the accused/appellant to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 5,000 in default of payment of fine, to further undergo rigorous imprisonment for a period of nine months under section 15 of the narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act').

(2) The facts necessary for adjudication of the matter as narrated in para No. of impugned judgment are as under : --

“On 9th January, 2001 ASI Jaswant Singh of Police Station, Sidhwan Bet accompanied by ASI Jasvir Singh, HC Teja Singh and CI Sukhwinder Singh reached the area of village Sidhwan Kalan while going from the side of village Sidhwan Kalan towards village Barsal

on a kutchra passage travelling in a private vehicle, that when the police party went about 100 yards ahead of village Sidhwan Kalan that Roop Sing alias Roopa son of Karnail Singh, Jat of village Abhupura met the police party and he was joined in the police party. When the police party reached 100 yards behind the bridge canal minor in the area of village Sidhwan Kalan that the accused was noticed coming from the opposite side carrying a bag on his head and who, on seeing the police party turned on the left hand side of the bank of the canal minor. On suspicion, the accused was apprehended and enquired about his name and other bio-data. ASI Jaswant Singh asked the accused that he suspected the bag carried by him contained some intoxicants and gave him the offer, that if he so desired the search of the bag would be conducted in the presence of the Magistrate of a Gazetted Officer. The accused reposed confidence in ASI Jaswant Singh,—vide his consent statement Ex.PA. At this, ASI Jawant Singh checked the bag and the same was found to have contained poppy husk, two samples of 250 grams each were separated and the bulk of poppy husk, on weighing, was found to be 39 kgs. and the same was allowed to retained in the same bag of the glazed paper and further put in the bag, carried by accused over his head. Different parcels of the sample and of the bulk were prepared and sealed with the seal bearing letters 'JS'. ASI Jaswant Singh prepared specimen impressions of the sela including the Chit Ex.P.1. The seal after use was handed over to ASI Jasvir Singh and the property was got into possession,—vide recovery memo Ex. PB. ASI Jaswant Singh sent the reqa Ex.PD to the police station, on the basis of which formal FIR Ex.PD/1 was recorded by SI/SHO Revinder Pal Singh. ASI Jaswant Singh conducted the search of the person of the accused but nothing was recovered, and in this regard, memo of search Ex.PC was prepared. He also disclosed the grounds of arrest to the accused,—vide memo of arrest Ex. PF. Vide report Ex.PH, Deputy Director (Toxicology) Forensic Laboratory, Punjab Chandigarh found the contents of the sample to be of poppy husk.

(3) After completing all the formalities, the challan was presented in the Court. The accused-appellant was charged for the commission of offence punishable under Section 15 of the Act, to which, he did not plead

guilty and claimed trial.

(4) In order to substantiate the charge, the prosecution has examined the following witnesses :--

PW1 ASI Jaswant Singh, the Investigating Officer of this case.

PW2 HC Amarjit Singh, with whom the case property was deposited. He handed over the sample parcels to CI Sukhwinder Singh to deposit the same with the FSL, Punjab, Chandigarh.

PW3 Inspector Ravinder Pal Singh, the then SHO of the police station Sidhwan Bet. After verification the case property, he put his seal on the same.

PW4 CI Sukhwinder Singh, who deposited the sample parcels with FSL, Punjab, Chandigarh on 12th January, 2001.

PW5 ASI Jasvir Singh, who was a member of police party. He was handed over the seal after use.

(5) When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant vehemently denied all the incrimination circumstances appearing in the prosecution evidence against him and pleaded false implication. Without adducing any witness, he closed his evidence.

(6) The learned trial Court after hearing both the parties, formulated two points, that what is the effect of non-joining of the independent witness and whether the prosecution has established the recovery of the poppy husk, was beyond a shadow of doubt.

(7) After analysing the entire evidence and hearing the learned counsel for the parties, the learned trial Court rejected the pleas raised by the counsel for the accused and convicted and sentenced the accused-appellant, as noticed at the outset.

(8) The present appeal was admitted on 10th January, 2003 by this Court.

(9) It is contended by the learned counsel appearing for the appellant that the learned trial Court has committed a grave error while convicting and sentencing the appellant. He further submits that the

prosecution did not examine the independent witness. The seal after use was not given to the independent witness Roop Singh, instead, the same was handed over to ASI Jasvir Singh. He further submits that there are material contradictions in the prosecution witnesses.

(10) To controvert these submissions, the learned State counsel contends that the prosecution case is fully established and therefore, the present appeal may be dismissed.

(11) I have heard the learned counsel for the parties and perused record carefully.

(12) As emanates from the prosecution evidence, the seal was not entrusted to the independent witness Roop Singh. The prosecution has not assigned any reason worth the name for preferentially handing over the same to ASI Jasvir Singh, an official witness. Undeniably, there is delay of three days in despatch of the sample parcels to the office of Chemical Examiner. The independent witness Roop Singh, in whose presence the recovery was allegedly effected, has been given up on the pretext of his having been won over by the accused, but no reason was given by the prosecution in this regard.

(13) In re: *Gurjant Singh* versus *State of Punjab* (1) the seal after use was not handed over to the independent witness, who had joined the investigation, but remained with the official witness. It was held that it was a serious flaw in the link evidence.

(14) In re: *Sukhdev Sing @ Sukha* versus *State of Punjab* (2) the seal was given to SI of the police and not to the independent witness. The Division Bench of this Court held that the possibility of seal being tampered with, substance being changed and the containers being re-sealed cannot be ruled out.

(15) In re: *Baldev Singh* versus *State of Punjab* (3) the seal was given to an independent witness, who was not examined. It was held that till the case property has not been despatched to the office of Forensic Science Laboratory, the seal should not be available to the prosecution agency and in the absence of such safeguard, the possibility of seal being

(1) 2007 (4) RCR (Gl.) 226

(2) 2006 (1) RCR (Gl. 4

(3) 2005 (1) RCR (Gl.) 823

tampered with substance being changed and the containers being re-sealed, cannot be ruled out.

16. In re: *Dhagla Ram* versus *State of Punjab (4)* also, the seals after use were handed over to an ASI, who was a member of the raiding party and not to the independent witness, who joined at the time of investigation. The independent witness was not even examined. The conviction was set aside.

17. In re: *Bantapalli Durga Rao and others* versus *State of A.P. (4)* the delay in sending the samples for chemical analysis was not explained. The conviction was set aside.

18. In view of the infirmities catalogued hereinabove, the present appeal is accepted and the impugned judgement of conviction and order of sentence is hereby set aside and the appellant is hereby acquitted of the charged offence.

S. Sandhu